

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.464 of 1997

R.Jeyaprakasam .. Petitioner

-Vs-

1. Tamil Nadu Electricity Board
rep. by its Chairman
800, Anna Salai
Chennai-600 002.

2. The Chief Engineer/Distribution
Tamil Nadu Electricity Board
Salem Region, Erode-9.

3. The Superintending Engineer
Tamil Nadu Electricity Board
Salem Electricity Distribution
Circle, Salem-1. .. Respondents

Petition under Article 226 of the Constitution of India for the issue of a writ of Certiorari as stated therein.

For petitioner : Mr.S.Elamurugan

For respondents : Mr.S.Chandrasekaran
for Mr.V.Radhakrishnan

:ORDER

Aggrieved by an order of dismissal dated 2.1.1997 passed by the Tamil Nadu Electricity Board (hereinafter referred to as "the Board"), on the ground that the petitioner produced a bogus community certificate and got all the benefits of appointment and promotions in the Board initially, the petitioner seeks the issue of a writ of certiorari, calling for the records relating to the proceedings of the second respondent dated 2.1.1997 made in Memo No.1364/A4/95-34 and to quash the same.

2. According to Mr.S.Elamurugan, learned counsel for the petitioner, the petitioner joined as a temporary casual labourer on daily wages in the Board on 16.12.1970, and thereafter, by proceedings dated 5.3.1974 of the Superintending Engineer, Mettur was temporarily appointed in the Board as Tester Grade II.

3. As per the S.S.L.C. Book of the petitioner, the community of the petitioner was "Reddy". But, only in the year 1978, the petitioner was able to get a community certificate from the Deputy Tahsildar, Athur, by proceedings dated 12.7.1978 that the petitioner belongs to Konda Reddy community.

4. In the meanwhile, the petitioner joined part-time B.E. Course in the year 1978 and completed the same in December, 1981, and applied to the post of Assistant Engineer.

5. Based on the B.E. qualification of the petitioner, the Board, by proceedings dated 21.6.1982, appointed him as Assistant Engineer in the Dharmapuri System.

6. Neither the petitioner nor the Board have placed relevant records before this Court as to whether the petitioner was promoted as Assistant Engineer from 21.6.1982 as a candidate belonging to Konda Reddy community or as a candidate belonging to other community.

7. However, the service of the petitioner as Assistant Engineer (Electrical) was regularised by the proceedings of the Board dated 19.5.1987. Thereafter, while drawing the panel for the post of Assistant Executive Engineer, the name of the petitioner was considered as a candidate belonging to Konda Reddy community, based on the community certificate issued by the Deputy Tahsildar, Athur, on 12.7.1978. On approval of the panel for promotion to the post of Assistant Executive Engineer, the petitioner was promoted as Assistant Executive Engineer on 7.5.1994.

8. In the meanwhile, on verification, the Revenue Divisional Officer, Salem, informed the Superintending Engineer of the Board at Salem Division, that the community certificate dated 12.7.1978, relied upon by the petitioner that he belongs to Konda Reddy community, is a bogus one, but not issued by the Taluk Office at all. Hence, disciplinary proceeding was initiated against the petitioner, a charge memo dated 26.2.1996 was served, explanation of the petitioner dated 4.5.1996 was obtained, an enquiry officer was appointed on 18.5.1996, personal hearing was held, and by proceedings dated 11.6.1996, the records relied upon by the Board were furnished to the petitioner and a due enquiry was held, which had ultimately culminated into the impugned proceedings dated 2.1.1997, dismissing the petitioner from service.

9.1. The bone of contention of Mr.S.Elamurugan, learned counsel for the petitioner, is that the entire impugned disciplinary action is vitiated, as the same is based on the proceedings of the Revenue Divisional Officer, Salem dated 30.1.1996, which was passed behind the petitioner, as the Revenue Divisional Officer, Salem, never gave any opportunity to the petitioner before

holding that the community certificate dated 12.7.1978 was bogus.

9.2. According to Mr.Elamurugan, once the proceedings of the Revenue Divisional Officer, Salem dated 30.1.1996 is violative of the principles of natural justice, the consequential initiation of disciplinary action by the Board in framing the charges and holding an enquiry, assuming that the petitioner was furnished with all the documents relied upon by the respondent Board and was given a free and fair opportunity in the enquiry conducted by the Board, the finding arrived at under the impugned proceedings is not valid in law.

9.3. In any event, it is contended by the learned counsel for the petitioner that the order of dismissal of the petitioner from service is illegal, as the community certificate relied upon by the petitioner dated 12.7.1978 that he belongs to Konda Reddy community was not relied upon by the Board when he was promoted to the post of Assistant Engineer on 21.6.1982; nor when his service as Assistant Engineer was regularised on 19.5.1987; nor when the petitioner was promoted as Assistant Executive Engineer on 7.5.1994. Therefore, even if the proceedings of the Revenue Divisional Officer, Salem, dated 30.1.1996, holding that the community certificate dated 12.7.1978 of the petitioner is a bogus one, and that the petitioner does not belong to Konda Reddy community, is relied upon for the purpose of including his name in the panel of promotion to the post of Assistant Executive Engineer, to which, he was entitled with effect from 7.5.1994, the petitioner is still entitled to continue in the post of Assistant Engineer to have the benefit of his promotion as a candidate belonging to other community.

10.1. Per contra, Mr.S.Chandrasekaran, learned counsel appearing for the respondent-Board, contends that the Board, having furnished all the copies of the proceedings relied upon by them to the petitioner, including the

proceedings of the Revenue Divisional Officer, Salem, dated 30.1.1996, the petitioner has no further grievance to complain about violation of the principles of natural justice.

10.2. It is also contended that the petitioner, having not taken any step to implead the Revenue Divisional Officer, Salem, is not entitled to contend that the proceedings of the Revenue Divisional Officer, Salem dated 30.1.1996 could not be relied upon for violation of the principles of natural justice, alleging that the petitioner had not been given any opportunity by the Revenue Divisional Officer, Salem, at any point of time before passing the said proceedings dated 30.1.19 96, and that the same was passed behind him.

10.3. Mr.S.Chandrasekaran, learned counsel for the respondent-Board, also brought to my notice the proceedings of the Chairman of the District Level Caste Vigilance Committee, Salem, dated 28.5.2001, which contains the reference of a letter dated 19.8.2000 of the petitioner himself, wherein, the District Level Caste Vigilance Committee, Salem, had given a fair and reasonable opportunity to the petitioner on 12 .3.2001, 9.4.2001 and 23.4.2001; but since the petitioner had not turned up for enquiry, held that the petitioner does not belong to Konda Reddy community.

11. I have given careful consideration to the submissions of both sides.

12. By the impugned proceedings dated 2.1.1997, the petitioner was dismissed from the service of the respondent-Board on the ground that he fraudulently claimed to be belonging to Konda Reddy community and availed the benefits thereunder, based on a bogus community certificate dated 12.7.1978, said to have been issued by the Deputy Tahsildar, Athur. The proceedings of the Revenue Divisional Officer, Salem, dated 30.1.1996 is to the effect that, after a careful perusal and examination of all the relevant records of the Athur Taluk, the community certificate dated 12.7.1978, which was said to have been issued by the Deputy Tahsildar, Athur, that the petitioner belongs to Konda Reddy community was found to be bogus, as the said certificate does not contain any proceedings number or file number. Assuming that the petitioner was not given any opportunity by the Revenue Divisional Officer, Salem, before passing the order dated 30.1.1996, it is not in dispute that the District Level Caste Vigilance Committee, even during the pendency of the writ petition, based on the representation dated 1 9.8.2000 of the petitioner himself, gave opportunities to the petitioner on 12.3.2001, 9.4.2001 and 23.4.2001 to substantiate his case that he belongs to Konda Reddy community. But the petitioner did not turn up for enquiry before the District Level Caste Vigilance Committee at all. Therefore, I do not find any substance in the contention of the learned counsel for the petitioner that the petitioner was in any manner prejudiced for having not given an opportunity by the Revenue Divisional Officer, Salem, before passing the proceedings dated 30.1.1996.

13.1. The core question that arises for my consideration in the above writ petition is whether the community certificate dated 12.7.1978 said to have been issued by the Deputy Tahsildar, Athur and relied upon by the petitioner is a true and authenticated one or not, and whether the petitioner is entitled to any opportunity before holding that the said community certificate is bogus?

13.2. It is settled law vide PRATAP SINGH Vs. STATE OF HARYANA reported in (2002) 7 SCC 484, that where there was serious dispute between the parties as to whether the certificates were bogus or genuine or forged, the High Court exercising jurisdiction under Article 227 and 227 of the Constitution of India could not have efficaciously decided such dispute. But, in the instant case, when the community certificate relied upon by the petitioner was said to be a bogus one, as found by the competent Revenue Authority, namely, the Revenue Divisional Officer, Salem, for the reasons that the said certificate does not contain any proceedings number or file number, in my considered opinion, the petitioner cannot complain want of opportunity at the preliminary stage itself, even though he is entitled for an opportunity to put forth his case in appropriate disciplinary proceedings. The petitioner was, admittedly, given a fair and reasonable opportunity by the District Level Caste Vigilance Committee on 12.3.2001, 9.4.2001, and 2 3.4.2001, and the petitioner having failed to avail such opportunity could not be said to have been prejudiced for non-issuance of notice by the Revenue Divisional Officer before passing the order dated 30.1 .1996.

14.1. The supplemental issue that arises for my consideration is, assuming the petitioner does not belong to Konda Reddy community, a Schedule Tribe, could the petitioner be dismissed from the service itself, when he was not promoted as Assistant Engineer based on the community certificate that he belongs to Konda Reddy community?

14.2. According to the petitioner, he was promoted to the post of Assistant Engineer by proceedings dated 21.6.1982, and his service was regularised in the said post on 19.5.1987 not as a candidate belonging to Konda Reddy community, but as a candidate belonging to other community. This aspect of the grievance of the petitioner was not properly weighed by the respondent-Board. I am, therefore, inclined to set aside the impugned order of dismissal of the petitioner from service of the respondent-Board dated 2.1.1997, and remit the matter to the respondent-Board for a limited purpose, namely, assuming it is held that the community certificate dated 12.7.1978 relied upon by the petitioner is bogus, could the petitioner be dismissed from the service itself, as he was promoted as Assistant Engineer and his service was regularised in the said post as a candidate belonging to other community and not as a candidate belonging to Konda Reddy community.

For the foregoing reasons, this writ petition is allowed and the matter is remitted to the respondent-Board with a direction to pass appropriate orders, as indicated above, within sixty days from the date of receipt of copy of this order, however, making it clear that the petitioner shall not be entitled to any benefit of service on the basis of the bogus community certificate. No costs.

Index : Yes

Internet : Yes

ksh/sasi

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